SINGAPORE REPORTS

ABDUL RAUB v. THE ATTORNEY-GENERAL

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Rajah JJ.) September 1, 1982]

[Singapore – Civil Appeal No. 97 of 1981]

Administrative Law – Police constable – Dismissal of – Whether there was non-compliance with Police Regulations, 1959 – Whether dismissal was a nullity – Whether breach of rules of natural justice – Police Force Act (Cap. 78), s. 27(1)(e), (h), (j) & (k) – Police Regulations, 1959, regs. 5, 7(5) & (6).

Police Force – Dismissal of police constable – Whether breach of rules of natural justice.

The appellant in this case was a police constable who joined the Police Force in May 1966. In February 1973 he was attached to the Airport Police Station. On May 20, 1973 he was served with 4 charges under the Police Force Act (Cap. 78) alleging that he had committed offences under section 27(1)(k), section 27(1)(j), section 27(1)(h) and section 27 (1)(e). On May 31, 1973 the appellant appeared before ASP Sta Maria, the officer authorised to conduct the disciplinary proceedings to answer the charges. At the conclusion of the said disciplinary proceedings he was found guilty. ASP Sta Maria imposed punishment accordingly. However, the punishments were not executed. On July 16, 1973 the appellant was informed by ASP Chan, the Officer Commanding "F" Division where the appellant was then attached, that the Commissioner of Police, acting under regulation 10 of the Police Regulations 1959, ordered a re-hearing of the disciplinary proceedings. The appellant was handed a charge sheet by ASP Chan containing 2 charges under section 27(1)(k) and (e) of the Police Force Act. These 2 charges were similar to 2 of the said 4 charges which were inquired into by ASP Sta Maria.

On July 18, 1979, the appellant was instructed to appear before ASP Chan on July 27, 1973 on these 2 charges. He duly appeared and claimed trial. ASP Chan found the appellant guilty of both charges. The Commissioner of Police acting on the findings and recommendations of ASP Chan by letter dated August 10, 1973 addressed to the appellant, dismissed the appellant from the Police Force.

The High Court dismissed the appellant's claim for a declaration that his dismissal from the Singapore Police Force was illegal, void and inoperative. The appellant appealed.

Held, dismissing the appeal: (1) the remedy of judicial review was concerned not with the decision of which review was sought but with the decision-making process;

(2) non-compliance with regulation 5 of the Police Regulations 1959 would not render illegal or void a dismissal otherwise valid;

(3) the appellant had a fair hearing and he was dismissed after he had first been told what was alleged against him, and hearing his defence or explanation. The written statements were properly admitted in evidence and there was no breach of the procedural provisions of regulation 7(5) and (6) of the Police Regulations.

Case referred to:

(1) *Zainal bin Hashim* v. *Government of Malaysia* [1979] 2 M.L.J. 276, 278.

COURT OF APPEAL.

J.B. Jeyaretnam for the appellant.

Chao Hick Tin (Sr. State Counsel) and Ms. Jocelyn Ong (State Counsel) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the Judgment of the Court): We dismissed the appellant's appeal against the judgment of the High Court dismissing his claim for a declaration that his dismissal from the Singapore Police Force was illegal, void and inoperative. We now give our reasons.

The appellant was a police constable who joined the Police Force in May 1966. In February 1973 he was attached to the Airport Police Station. On May 20, 1973 he was served with four charges under the Police Force Act alleging that he had committed offences under section 27(1)(k), section 27(1)(j), section 27(1)(h) and section 27(1)(e) of the said Act. Section 27(1) where material reads:–

"27. (1) Where a subordinate officer is found guilty by a commanding officer or any other officer authorised by him to conduct disciplinary proceedings, of any of the following offences:–

(e) disobedience of Police Regulations, Police General Orders, Force Orders, Standing Orders or any orders of a superior officer whether written or verbal;

(h) neglect of duty or orders;

(j) making in the course of his duty a statement which is false in a material particular;

(k) excess of duty resulting in loss or injury to any other person.

a commanding officer may order that such subordinate officer be dismissed or retired from the Police Force or may punish him with any of the following punishments:–

(n) reduction in rank, grade or seniority;

(o) deferment or stoppage of increment;

(p) reprimand;

(q) caution;

(r) extra duty

and in lieu of or in addition to any of the aforesaid punishments, may impose a fine not exceeding one hundred dollars or forfeiture of not more than one month's pay . . .".

Section 27(2) provides that where an officer authorised by a commanding officer is conducting the disciplinary proceedings he may impose the punishment of dismissal or retirement.

On May 31, 1973 the appellant appeared before Assistant Superintendent of Police Sta Maria, the officer authorised to conduct the disciplinary proceedings, to answer the charges and at the conclusion of the disciplinary proceedings he was found guilty. ASP Sta Maria found the appellant guilty on all the four charges and imposed the punishment of three days' pay cut for the section 27(1)(k) offence; eight hours extra duty for the section 27(1)(j) offence and a caution for the section 27(1)(h) and (e) offences. The punishments were not executed.

On July 16, 1973 the appellant was informed by ASP Francis Chan, the Officer Commanding "F" Division where the appellant was then attached, that the Commissioner of Police, acting under Regulation 10 of the Police Regulations 1959, had ordered a re-hearing of the disciplinary proceedings. Regulation 10 is as follows:—

"10. A commanding officer may order a rehearing of any disciplinary proceedings against a subordinate officer if he is of the opinion that an inadequate sentence or an excessive sentence has been imposed or if the proceedings have not been conducted in a proper manner."

The appellant was handed a charge sheet by ASP Francis Chan containing two charges under section 27(1)(k) and (e) of the Act. These two charges were, with inconsequential amendments, similar to two of the four charges which were inquired into by ASP Sta Maria. They read as follows:—

"First Charge

You, Constable 8404 Abdul Raub b. Noordin are charged with excess of duty resulting in injury to one Peter Ewald in that you, on February 15, 1973, at about 2010 hours at the Mandarin Hotel, Singapore, did illegally enter and carry out a search of Room No. 928 which room was then occupied by the said Peter Ewald, and that you have thereby committed an offence under section 27(1)(k) punishable under section 27(1) of the Police Force Act Cap. 78."

"Second Charge

You, Constable 8404 Abdul Raub b. Noordin are charged with disobedience of orders in that you, on February 15, 1973 at about 2010 hours at the Mandarin Hotel, in Orchard Road, Singapore, contrary to PGO A18 para (1) did fail to maintain your pocket book and that you have thereby committed an offence under section 27(1)(e) punishable under section 27(1) of the Police Force Act Cap. 78."

On July 18, 1973 the appellant was instructed to appear before ASP Francis Chan on July 27, 1973 on these two charges. He duly appeared and claimed trial and at the conclusion of the proceedings ASP Francis Chan found the appellant guilty on both charges. The Commissioner of Police, acting on the finding and recommendation of ASP Francis Chan, by letter dated August 10, 1973 addressed to the appellant, dismissed the appellant from the Police Force.

Several grounds of appeal were raised in the Petition of Appeal but at the hearing of the appeal, Mr. Jeyaretnam, counsel for the appellant relied mainly on three grounds. Mr. Jeyaretnam contended that there was no evidence at all to support the finding of ASP Francis Chan that the appellant was guilty on the first charge. It was a contention absolutely devoid of substance in fact and in law. The remedy of judicial review was concerned not with the decision of which review was sought but with the decision-making process.

Mr. Jeyaretnam's next ground was that the proceedings against the appellant were invalidated because of the failure of the Commissioner of Police to comply with Regulation 5(1) of the Police Regulations, 1959 before instituting proceedings against the appellant. Regulation 5 reads as follows:—

"5. (1) A complaint against a police officer shall be reduced to writing and be read over to the informant and shall be signed by him.

(2) Any such complaint shall be investigated forthwith."

Mr. Jeyaretnam's contention was that the regulation was mandatory and not directory and the failure to comply with it rendered the dismissal void. We rejected this contention. As compliance with it in this case would clearly not have served any useful purpose, we were of the opinion that non-compliance with it would not render illegal or void a dismissal otherwise valid (see *Zainal bin Hashim* v. *Government of Malaysia*[1] per Viscount Dilhorne at pg. 278).

Lastly, it was contended that the admission by ASP Francis Chan at the disciplinary proceedings before him of two written statements were in breach of Regulation 7(5) and (6) of the Police Regulations 1959 and that such breach rendered the proceedings a nullity and the dismissal null and void as being contrary to the rules of natural justice. We rejected this contention. The wrongful admission of a written statement as evidence is not,

in our opinion, *per se* contrary to the principles of natural justice. In the present case the appellant had a fair hearing. He was dismissed after he had first been told what was alleged against him and hearing his defence or explanation. We were of the opinion that the written statements were properly admitted in evidence and there was no breach of the procedural provisions of the Regulation 7(5) and (6) of the Police Regulations.

For all these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *J.B. Jeyaretnam & Co.*

SYED HUSSAIN BIN ABDUL RAHMAN ALKAFF & ORS. v. TEO EE HUP

[C.A. (Wee Chong Jin C.J., Sinnathuray & Lai Kew Chai JJ.) October 14, 1982]

[Singapore – Civil Appeal No. 7 of 1982]

Landlord & Tenant – Claim by landlord for possession – Landlord themselves in breach of provision of Control of Rent Act – Court's refusal to give redress – Appeal – Appeal dismissed – Control of Rent Act (Cap. 266), ss. 3, 5 & 15 (1) (g).

Landlord & Tenant – Rent-controlled premises – Claim for possession – Muslim Calendar and Gregorian Calendar distinguished.

The plaintiffs/appellants sought to recover possession of No. 191 Beach Road, a rent-controlled premises from the first defendant. They argued that he was in breach of a condition of his tenancy not to sublet which he did to four other defendants. Alternatively, the first defendant was collecting rents from his sub-tenants in excess of the permitted margin.

The facts revealed that in Rent Board Application No. 33 of 1974 the rent of the premises was increased from $224.40 to $278.60 per month. This entailed the serving of a Notice to Quit dated December 20, 1973 (the First Notice). The permitted rent increase was according to Gregorian Calendar whereas the rent actually collected by the plaintiffs from the first defendant as from the date of permitted increase was in accordance with the Agreement based on the Muslim Year which has one more month than the Gregorian Year.

The plaintiffs, having learnt that the first defendant had sublet parts of the premises, served a Notice to Quit dated July 28, 1977 (the Second Notice) on the first defendant.

The learned trial judge found, *inter alia*, that there had been a breach of clause (b) of the said Agreement, which would entitle the plaintiffs under the Agreement to terminate the tenancy and re-enter the premises. On issue (d) he found the Second Notice to be a valid one. The first defendant appealed. Rajah J. allowed the defendant's appeal (see [1982] 2 M.L.J. 142).

The plaintiffs appealed. (Before the appeal came on for hearing, however, by an Order of Court dated August 16, 1982, one Mr. Lim who had bought the premises in March 1982 was substituted as the appellant in place of the Trustees).

Held, dismissing the appeal: (1) the court was in agreement with Rajah J. that the trial court did not consider as it ought to have whether in all the circumstances of the case it was reasonable for an order of possession to be made against the tenant.

(2) having only recently become the owner of the premises it was clearly not reasonable that the appellant should succeed against the tenant who has been in the premises since 1966.

Case referred to:

(1) *Koh Chee Chong* v. *Chop Fook On* [1957] M.L.J. 197.

COURT OF APPEAL.

Kirpal Singh for the Appellants.

J.B. Jeyaretnam for the Respondent.

Cur. Adv. Vult.

Sinnathuray J. (delivering the Judgment of the Court): The appellants, the Trustees of the 1898 Alkaff Settlement who brought this appeal, as plaintiffs in District Court Summons No. 5601 of 1978, claimed possession of No. 191 Beach Road ("the premises") from the respondent, the first defendant in the action, on the ground that the respondent was in breach of a condition of his tenancy not to sublet. Before the appeal came on for hearing however, by an order of court dated August 16, 1982, Mr Lim Kain Yait who had bought the premises in March 1982 was substituted as the appellant in place of the Trustees. The appeal heard on September 14, 1982 was dismissed with costs. We now give our reasons.

The parties are hereafter referred to as "the landlords" and "the tenant".

It is not in dispute that the premises were subject to the provisions of the Control of Rent Act ("the Act") (Cap. 266); that the tenant was in possession of the premises under a tenancy agreement dated January 29, 1966 at the monthly rental of $224.40 payable according to the Muslim calendar; and that under clause 2(b) of the said agreement the tenant was prohibited from subletting without the landlords' consent.